

## **REMARKS**

### **I. Status of Claims**

Claims 9-28 are pending in the application. Claim 9 is the only independent claim and is currently amended. Support for the additional claim language can at least be found on page 7, lines 3-6, and page 8, lines 9-24 of the specification. It is noted that claims 1-8 were previously canceled without prejudice to and/or disclaimer of the subject matter therein. Claim 16 is also amended to correct antecedent basis.

Claims 9-26 stand rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9-11 stand rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Farnbach (USP 3,923,216) (“Farnbach”).

Claims 12 and 17-18 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Farnbach in view of Berberian (USP 6,290,114) (“Berberian”).

Claims 13-16, 19-20, 22-23, 25-26, and 28 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Farnbach in view of Smith (USP 5,725,139) (“Smith”).

Claims 21 and 24 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Farnbach in view of Berberian as applied to claim 12 above, and further in view of Smith.

Claim 27 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Farnbach in view of Berberian as applied to claim 12 above, and further in view of Smith.

The Applicant respectfully requests reconsideration of these rejections in view of the foregoing amendments and the following remarks.

### **II. 35 USC 112, second paragraph, Rejection**

Claims 9-26 stand rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant respectfully submits that the foregoing amendments should obviate any perceived ambiguity. Thus, withdrawal of this rejection is respectfully requested.

### **III. Pending Claims**

Claims 9, the only independent claim, stands rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Farnbach.

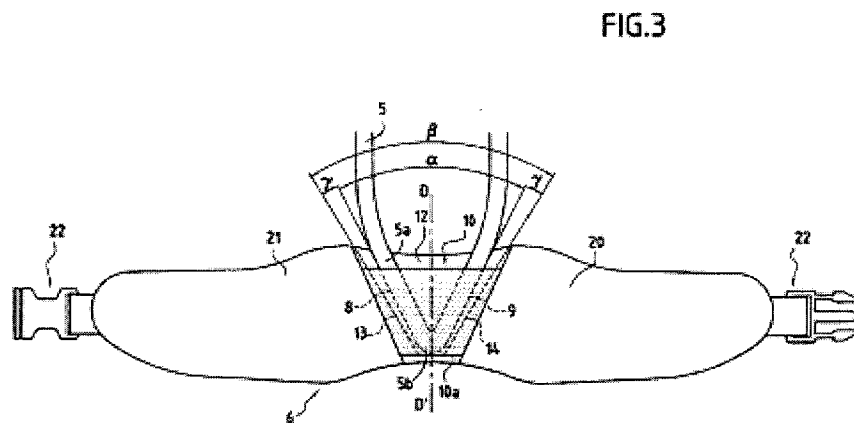
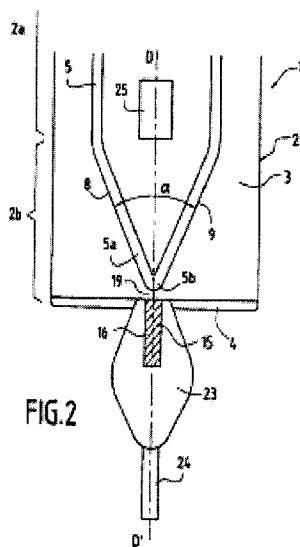
The Applicant respectfully submits that claim 9 is patentable over Farnbach at least because it recites, *inter alia*, "...wherein the bottom portion of the rigid frame has a V-shaped configuration with ***furthest-apart edges having an angle  $\alpha$  at the apex***, and in its middle and rear portion, the belt assembly includes an upwardly open pocket having a V-shaped configuration with ***an inside side edge of angle  $\beta$  at the apex***, where  $\beta$  is greater than  $\alpha$ , such that said pocket is suitable for serving as a housing for receiving the V-shaped bottom portion of the frame while allowing the belt assembly to pivot angularly relative to the remainder of the rucksack, ***the inside edges of the upwardly open pocket coming into abutment against the furthest-apart edges of the bottom portion of the rigid frame in order to prevent pivoting beyond an angle  $\gamma$  equal to  $(\beta-2)/2$*** ." (emphasis added)

In certain embodiments of the present invention, for example, FIG. 2 reproduced below, the rigid frame 5 has a configuration that is unique in that its bottom portion terminates in a V-shaped configuration. More specifically, the frame 5 is made up of two metal bars which are parallel in the upper portion 1a of the rucksack and which, in the lower portion 2b, converge towards each other so as to be united, thus giving the frame 5 its V-shaped bottom portion 5a. The V-shaped configuration of the bottom portion 5a of the frame 5 forms an angle  $\alpha$  at the apex, where the value of the angle  $\alpha$  is measured between the furthest-apart edges 8 and 9 of the frame 5. The point 5b of the frame 5 is located close to the bottom edge 7 of the back 3 of the rucksack when the rucksack is in its normal configuration. See paragraphs [0030-0035] and [0038] of application as published.

Moreover, FIG. 3, reproduced below, shows the belt assembly 6 (i.e., the face that is visible in the view is the face that comes into contact with the back 3 of the rucksack when assembled thereto). In its center, symmetrically about the axis DD', the belt assembly 6 has a

back pocket 10 with its opening 11 facing upwards. The back pocket 10 has a V-shaped configuration with an angle  $\beta$  at the apex, where the angle  $\beta$  is greater than the above-mentioned angle  $\alpha$ . *Id.*

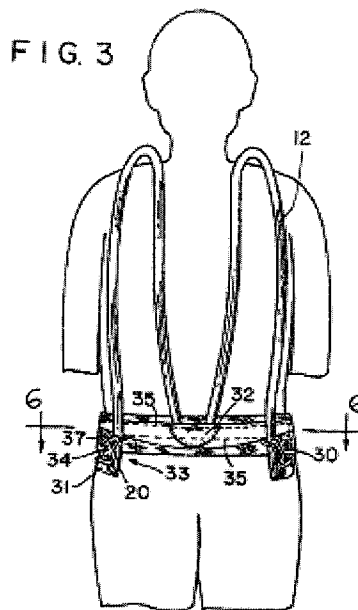
In the centered position as shown in FIG. 3, the furthest-apart edges 8 and 9 of the bottom portion 5a of the frame 5 are spaced apart from the inside side edges 13 and 14 of the pocket 10 by an angle  $\gamma$  that is equal to  $((\beta - \alpha)/2)$ , where this angle  $\gamma$  corresponds to the capacity of the belt assembly 6 to pivot angularly on either side of the axis of symmetry DD'. If the movement that occurs when the user is moving corresponds to pivoting through an angle greater than  $\gamma$ , then the corresponding inside edge 13, 14 of the pocket 10 will come into contact against the edge 8, 9 of the frame and thus prevent it from pivoting more than the angle  $\gamma$ , thereby applying stress to the rucksack 1. Consequently, it can be important to determine accurately the value of the angle  $\gamma$  as a function of the type of rucksack and its use. *Id.*



With respect to Farnback, this reference describes a rucksack comprising a bag having a back panel, a belt assembly, and a rigid frame secured to the back panel and the belt assembly. The bottom portion of the rigid frame has a U-shaped configuration and not a V-shaped configuration with further-edges of an **angle  $\alpha$  at the apex**, as recited in the invention of claim 9. Also, in Farnbach, the belt assembly includes in its middle and rear portion an upwardly open pocket having a U-shaped configuration and not a V-shaped configuration with inside edges of angle  **$\beta$  at the apex**, as claimed in the invention of claim 9. Moreover, in the invention of claim

9, the angle  $\beta$  is greater than  $\alpha$ , such that a pocket shaped configuration for both the inside edges upwardly open pocket and the further-apart edges of the bottom portion of the rigid frame, with the angle  $\beta$  being greater than  $\alpha$ , allows the upwardly open pocket to receive the bottom portion of the rigid frame to angularly pivot the belt assembly relative to the remainder of the rucksack (while the inside side edges of the upwardly *open pocket come into abutment against the furthest-apart edges of the bottom portion of the rigid frame in order to prevent pivoting beyond an angle  $\gamma$  equal to  $((\beta - \alpha)/2)$ .*

In Farnbach (FIG. 3 of which is reproduced below), in contrast to the invention of claim 9, the U-shaped configuration of both the upwardly open pocket and the bottom portion of the rigid frame do not limit pivoting between the belt assembly and the remainder of the rucksack beyond a defined angle. Accordingly, Farnbach differs from the invention of claim 9.



That said, lacking any teaching and/or suggestion of each and every element of the inventions of claim 9, it is respectfully submitted that Farnbach does not anticipate these claims as alleged. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Also, it is respectfully submitted that none of the other cited references (e.g., Berberian or Smith) address the deficiencies of Farnbach.

As discussed in MPEP 2143.01, obviousness can only be established by combining or modifying the *teachings of the prior art* to produce the claimed invention where there is some *teaching, suggestion, or motivation* to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching *test* as a guard against using hindsight in an obviousness analysis).

Further, as discussed in *KSR Int'l Co. v. Teleflex Inc.* 550 U.S. 398, 418 (2007), it is necessary to identify the reason why a person of ordinary skill in the art would have been prompted to modify Farnbach in the manner as recited in the invention of claim 9. Obviousness cannot be sustained by mere conclusory statements.

Accordingly, it is respectfully submitted that claim 9 and its dependent claims are patentable over Farnbach.

#### **IV. Conclusion**

In light of the above discussion, the Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance. The Examiner is invited to contact the undersigned at (202) 220-4420 to discuss any matter concerning this application. The Office is authorized to charge any fees related to this communication to Deposit Account No. 11-0600.

Respectfully submitted,

Dated: February 12, 2010

By: /Daniel G. Shanley/  
Daniel G. Shanley  
(Reg. No. 54,863)

KENYON & KENYON LLP  
1500 K Street, N.W., Suite 700  
Washington, D.C. 20005  
Tel: (202) 220-4200  
Fax: (202) 220-4201  
Customer No. 23838